IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 228 OF 2005

State
Through Public Prosecutor,
High Court of Bombay at
Panaji. ... Applicant

versus

Shri Rohidas Hari Vast,
S/o Hari Vast,
R/o H. No.598,
Shirfond Curchorem,
Salcete, Goa. ... Respondent

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mrs. A. A. Agni with Mr. M. S. Prabhudessai, Advocates for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 9TH MARCH, 2006.

ORAL ORDER

The State has invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 to assail the Order dated 7-11-2003 of the

learned J.M.F.C., Quepem discharging the respondent/accused under Sections 463/465, 466, 467 and 468 I.P.C. and the Order dated 7-7-2005 of the learned Sessions Judge, dismissing the revision filed by the State against the said Order of discharge.

2. The extraordinary jurisdiction of this Court was invoked on behalf of the State essentially because the change of law arising from the case of **State of Orissa** v. **Debendra Nath Padhi**((2005) 1 SCC 568) by which the previous Judgment of the Supreme Court in the case of Satish Mehra was overruled and now it has been held by the Apex Court that at the stage of framing of charge the accused is not entitled to produce documents and on the basis of the documents so produced the accused cannot be discharged. However, it is now seen that there are more issues than one, involved which resulted in the discharge of the accused and in such a situation this Court will not permit the extraordinary jurisdiction to be invoked only on a mere technicality that in discharging the accused the learned J.M.F.C. had looked into the documents produced by the accused at the stage of framing of charge.

3. Be that as it may, it appears that the respondent/accused was a Chairperson for the year 1988-89 when the alleged offences are said to have been committed by him. In fact, the learned Public Prosecutor has not been able even to tell the Court as to on which date the said offences were committed by the accused by changing the record of house tax namely, House No. 433 which then stood in the name of Tulshidas Shirodkar and was changed in the name of Dharma Shirodkar, both of them being brothers. For the said period 1988-89, it appears that there were three Chief Officers namely, B. F. Coutinho, R. B. Kamat and P. P. Srinivas Reddy. Again, it is not known as to during the tenure of which Chief Officer the said offences are alleged to have been committed and if so why concerned Chief Officer did not file a complaint.

4. Only or about 31-1-2002 a complaint came to be filed by the Chief Officer Venancio Furtado at a time when the accused was no longer the Chairperson of the said Curchorem-Cacora Municipal Council but was only a Councillor. The said Chief Officer in the said complaint/FIR dated 31-1-2002 alleged that the accused as the Chairperson had no authority to change

the name of Dharma Shirodkar in place of Tulshidas Shirodkar as recorded on the Demand and Collection of House Tax Register of the said Municipality. The complaint further alleged that the accused as the then Chairperson had committed the offences punishable under Sections 463, 464, 465, 466, 467 and 468 I.P.C.

5. When the charge-sheet was filed after investigations by the Curchorem Police Station, the respondent/accused filed an application dated 10-1-2003 for discharge. In the said application, the accused took threefold defences namely, that he was a public servant and, therefore, could not be prosecuted for want of sanction under Section 197 of the Code of Criminal Procedure; that the complaint did not disclose the said alleged offences and that the offences were barred by limitation. The learned J.M.F.C. took up only two of the said pleas and held that sanction was required and inasmuch as the complaint was also barred by limitation. The learned Sessions Judge by his Order dated 7-7-2005 dismissed the revision filed by the State. One of the grounds on which the criminal revision came to be dismissed is that the learned Sessions Judge held that the element of

cheating was clearly missing in this case and it was not the case of the prosecution that the accused had forged the document for the purpose of cheating. In this background, the whole question which arises before this Court is whether the State ought to be allowed to invoke the extraordinary jurisdiction only because the accused had filed certain documents along with an application at the stage of framing of charge against discharge, when otherwise the offences alleged against the accused were not at all made out?

6. There is no dispute that the said Dharma Shirodkar and Tulshidas Shirodkar were brothers and as far as the said Demand and Collection of Tax register of the Municipality was concerned, the said house number stood registered in the name of Dharma Shirodkar. The said Tulshidas Shirodkar had filed a civil suit against his brother Dharma Shirodkar and the suit claiming a right to the said house and the said suit was dismissed. It can be seen that after the dismissal of the suit the said Dharma Shirodkar had approached the Chief Officer for change of his name as against the said house number. A letter dated 6-7-1989 was addressed by the Chief Officer to Dharma

Shirodkar requesting him to produce the documents regarding his claim as to why the house tax should not be transferred in his name. There was another letter dated 25-9-1989 issued by the Chief Officer to the said Tulshidas Shirodkar bringing to his notice that he had failed to produce any documents regarding the house no.433 and that the said Dharma Shirodkar had already submitted his ownership documents. It is only thereafter that the respondent/accused as the Chairperson of the Municipal Council changed the name of Tulshidas Shirodkar and inserted the name of Dharma Shirodkar as against the house no.433 on the said Demand and Collection of Tax register, and, not only that the respondent/accused signed the said register with his designation as the Chairperson of the said Municipal Council. Whether the respondent/accused as a Chairperson of the said Municipal Council had authority to carry out the said change on the said Demand and Collection register is one thing and whether in doing so he committed any offences is quite another thing. As rightly pointed out by the learned Sessions Judge the element of dishonesty was missing. The Sections alleged against the accused are all interrelated to Section 463 I.P.C. which defines forgery. Forgery has been defined as making any false

documents or part of it, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed(Emphasis supplied). That dishonest intention was wholly lacking from the facts stated herein above. Before the said change was carried out by the respondent/accused both the parties were put at notice by the Chief Officer and it is only when the said Tulshidas Shirodkar had failed to produce any records to support his name against the said house number that the respondent/accused struck off the name of Dharma Shirodkar and inserted that of Tulshidas Shirodkar and in doing the same the respondent/accused committed no offence. Whether he had authority to do so is a matter which the learned J.M.F.C. was certainly not concerned with.

7. Mr. S. N. Sardessai, the learned Public Prosecutor submits that whether the accused had a dishonoured intention could not have been gone into at the stage of framing of charge. This submission is devoid of any merit. It was certainly necessary

whether on the facts stated, prima facie, any conclusion could be arrived at whether the accused had committed any of the offences alleged against him. This was certainly required to be gone into.

8. In view of the above and considering the facts of the case discussed herein above, this is not a fit case to invoke the extraordinary jurisdiction. No useful purpose would be served by setting aside the impugned Orders only because the accused could not have filed an application producing documents before framing of charge. Consequently, Criminal Miscellaneous Application No.228 of 2005 is hereby dismissed.

N. A. BRITTO, J.

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